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# ANNUAL REPORT


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For the Province of Ontario  
Pursuant to Section 195  
*of The Criminal Code of Canada*

January 1, 1993 to December 31, 1993

Ministry of  
the Attorney General

Ministère du  
Procureur général



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ANNUAL REPORT FOR THE PROVINCE OF ONTARIO  
PURSUANT TO SECTION 195 OF THE *CRIMINAL CODE*

Introduction

On August 1, 1993, a series of amendments to Parts VI and XV of the *Criminal Code* contained within Bill C-109, an "Act to amend the *Criminal Code*, the *Crown Liability and Proceedings Act* and the *Radiocommunication Act*," was proclaimed in force. These amendments represented a marked extension of the prior legislation authorizing the interception of private communications by creating the following three new provisions:

- (a) Section 184.1, sometimes referred to as the "electronic lifeline" provision, which authorizes the police, without judicial order, to monitor undercover officers or others assisting the police in order to prevent bodily harm;
- (b) Section 184.2, which permits a judge of the Ontario Court of either the General or Provincial Division to authorize the interception of private communications in circumstances where one of the participants consents; and
- (c) Section 184.4, which authorizes a peace officer, without judicial order, to intercept private communications in certain exceptional and exigent circumstances;

Bill C-109 did not materially alter ss.185 or 186 of the *Code*, which together authorize a judge of the Ontario Court (General Division) to grant an application for the interception of private communications only when:

- (a) that it would be in the best interests of the administration of justice to do so;
- and
- (b) that other investigative procedures have been

tried and have failed, or are unlikely to succeed other or that the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures.

As the following report is prepared pursuant to s.195 of the *Criminal Code* (the "*Code*") on behalf of the Attorney General of Ontario, it does **not** address the frequency or use of interceptions conducted pursuant to ss. 184.1, 184.2 or 184.4. However, the proclamation of Bill C-109 did expand the scope of this report to include two types of judicially authorized interceptions issued in Ontario during the calendar year of 1993:

- (a) Authorizations issued by a judge of the Ontario Court (General Division) pursuant to ss.185 and 186 of the *Code* for the interception of private communications, (the subject of previous reports), and
- (b) Warrants issued by a judge of either the Ontario Court (General Division) or (Provincial Division) pursuant to s.487.01(4) of the *Code*, (a new addition).

The new section 487.01, within Bill C-109, often referred to as the general Warrant, permitted application to be made to either the Provincial or General Division of the Ontario Court for a Warrant authorizing,

...an officer to observe, by means of a television camera or other similar electronic device, any person who is engaged in activity in circumstances in which the person has a reasonable expectation of privacy...

Pursuant to s.487.01(5), certain sections of Part VI of the *Code* are made applicable to Warrants issued pursuant to s.487.01(4), including s.195, which prescribes what is to be included in the annual reports of the Attorneys General. In 1993, there was one application



for a Warrant pursuant to s.487.01(4) for the interception of visual images, which was issued in conjunction with an Authorization for the interception of oral communications under s.186. For the purposes of this report, the relevant figures relating to this Warrant under ss.195((2)(d),(e),(l) and (m) are already subsumed within those relating to Authorizations for the same sections, so that the latter should not be added to the former. For example, the figures pursuant to s.195(2)(d) reflect that proceedings were instituted in respect of 4 persons identified in a Warrant. These four persons have also been included within the total 140 persons identified in Authorizations against whom proceedings were commenced. Likewise, the figures associated with s.195(2)(m) under the Warrant column indicate that 1 proceedings was commenced in which evidence obtained through the execution of the Warrant was adduced in evidence. This proceeding has already been included in the corresponding figure of 171 under the Authorizations column and does not constitute a separate, additional proceeding.

#### Applications under s.185 of the Code

Section 185 of the *Code* requires, in part, that an application to a Judge of the Ontario Court (General Division) for an Authorization to permit the interception of private communications must be made by an agent specially designated in writing by the Attorney General of Ontario. As in previous years, these designated agents are Crown counsel working in various Crown Attorney's offices throughout Ontario, or at the Crown Law Office - Criminal in Toronto. Although s.188 of the *Code* allows for the possibility of peace officers to be designated in writing for the specific purpose of making applications where urgent circumstances exist, no designations of this nature were made in 1993.

Before an application for an Authorization to intercept private communications is made, an agent undertakes a careful review of the investigation conducted by the police to ensure that the rigorous threshold standards set out in s.186 of the *Code* have been satisfied. In 1993,

81 Authorizations were granted in respect of 58 separate police investigations. As s.186(4)(e) requires that the duration of an Authorization may not exceed 60 days, the nature and extent of some investigations require that a number of successive applications be made. While s.186(6) of the *Code* provides that an Authorization may be renewed, it is the practice of agents in Ontario to request that a fresh Authorization be granted and to file, in support thereof, information through affidavit setting out the most recent results of the investigation. This approach accounts for the fact that no Authorizations were renewed in Ontario in 1993.

Of the 58 police investigations conducted in 1993, 19 involved two, three or four Authorizations, as set out in the table below:

Frequency of Authorizations obtained <i>per</i> investigation	Actual Number of Investigations	Actual Number of Authorizations
1	39	39
2	16	32
3	2	6
4	1	4
Total	58	81

Often, successive Authorizations in respect of the same general matter under investigation are granted on different terms than the original Authorization. Such subsequent Authorizations may vary from previous ones as to the named objects, the places of interception, the manners in which interceptions are permitted to occur and the enumerated offences. These changes correspond to the progress of the investigation as new information comes to light and as the focus of the inquiry expands or is narrowed. However, for the



purposes of this Report, where multiple Authorizations have been requested in respect of the same investigation, the relevant statistical data relating to the following areas identified in s.195(2) have not been "double counted":

- s.195(2)(d): the number of persons identified in an Authorization against whom proceedings were commenced....
- s.195(2)(e): the number of persons not identified in an Authorization against whom proceedings were commenced...
- s.195(2)(l): the number of persons arrested whose identity became known...

As the table below indicates, there has been a decline in 1992 in the number of Authorizations issued, from the previous three years:

Year	Number of Authorizations Issued
1981	149
1982	171
1983	155
1984	127
1985	132
1986	115
1987	82
1988	51
1989	50
1990	107
1991	103
1992	98
1993	81

Section 195(2)(i) requires that the offences in respect of which Authorizations were given be identified. This Report enumerates both substantive offences and the associated offences of attempt, conspiracy, counselling and accessory after the fact. Some ancillary offences are specifically provided for in the *Code*, such as the offence of attempted murder, contrary to s. 239 or accessory to murder after the fact, contrary to s.240. In addition, the *Code* also creates the general offences of counselling, accessory after the fact, attempt and conspiracy in ss. 22, 23, 24 and 465, respectively. In an effort to present the data in this area in a uniform fashion, these associated offences appear in the context of the substantive offence to which they relate.

The lawful and authorized interception of private communications continues to be a valuable investigative aid in the prevention, detection and prosecution of criminal activity. In many instances in 1993, prosecutions were conducted primarily on the basis of evidence tendered in the form of recorded intercepted private communications.

**Statistical data in respect of ss. 195(2)(a) to (n) and 195(3)(a)**

	Authorizations (s.185)	Warrants (s.487.01(4))
s. 195(2)(a) The number of applications made for Authorizations/Warrants:	81	1
(b) The numbers of applications made for renewal of Authorizations/Warrants:	0	0
(c) The number of applications referred to in paragraphs a) and (b), above, that were granted:	81	1
The number of applications referred to in paragraphs (a) and (b), above, that were refused:	0	0
The number of Applications referred to in paragraphs (a) and (b), above, that were granted subject to terms and conditions:	81	1



	Authorizations (s.185)	Warrants (s.487.01(4))
s. 195(2)(d) The number of persons identified in an Authorization/Warrant against whom proceedings were commenced at the instance of the Attorney General of Ontario in respect of:		
(i) an offence specified in the Authorization/Warrant:	140	4
(ii) an offence other than an offence specified in the Authorization/Warrant but in respect of which an Authorization/Warrant may be given:	53	0
(iii) an offence in respect of which an Authorization/Warrant may not be given:	74	0
s. 195(2)(e) The number of persons <u>not</u> identified in an Authorization/Warrant against whom proceedings were commenced at the instance of the Attorney General of Ontario in respect of:		
(i) an offence specified in such an Authorization/Warrant:	42	5
(ii) an offence other than an offence specified in such an Authorization/Warrant but in respect of which an Authorization/Warrant may be given:	6	0
(iii) an offence other than an offence specified in such an Authorization/Warrant and for which no such Authorization/Warrant may be given:	43	0

and whose commission or alleged commission of the offence became known to a peace officer as a result of an interception of a private communication under an Authorization/Warrant.

		Authorizations (s.185)	Warrants (s.487.01(4))
s.195(2)(f)	The average period for which Authorizations/ Warrants were given:	51.77 days	60 days
s.195(2)(g)	The number of Authorizations/Warrants that by virtue of one or more renewals thereof were valid,		
	for more than 60 days...	0	0
	for more than 120 days...	0	0
	for more than 180 days...	0	0
	for more than 240 days...	0	0
s.195(2)(h)	The number of persons given notifications pursuant to s. 196:	496	9
s.195(2)(i)	The offences in respect of which Authorizations/Warrants were granted:		

Section	Offence	Authorizations (s.185)	Warrants (s.487.01(4))
s. 57	Uttering a False Passport	1	
	conspiracy	1	
	attempt	1	
	accessory		
	counselling		
s. 81	Use of Explosives	1	
	conspiracy	1	
	attempt	1	
	accessory		
	counselling		

Section	Offence	Authorizations (s.185)	Warrants (s.487.01(4))
s. 82	<b>Possession of Explosives</b>	<b>2</b>	
	conspiracy	2	
	attempt	2	
	accessory	2	
	counselling	2	
s. 90	<b>Possession of Prohibited Weapon</b>	<b>2</b>	
	conspiracy	2	
	attempt	2	
	accessory		
	counselling	2	
s. 120	<b>Bribery</b>	<b>1</b>	
	conspiracy		
	attempt		
	accessory		
	counselling		
s. 122	<b>Breach of Trust</b>	<b>4</b>	
	conspiracy	4	
	attempt	2	
	accessory	2	
	counselling	4	
s. 139	<b>Obstructing Justice</b>	<b>4</b>	
	conspiracy	4	
	attempt		
	accessory	3	
	counselling	5	
s. 163	<b>Distributing Obscene Material</b>	<b>1</b>	
	conspiracy	1	
	attempt	1	
	accessory		
	counselling	1	



Section	Offence	Authorizations (s.185)	Warrants (s.487.01(4))
s. 202	Betting, Pool-selling, Bookmaking	7	
	conspiracy	7	
	attempt	3	
	accessory	1	
	counselling	1	
s. 235	Murder	34	
	conspiracy	30	
	attempt	26	
	accessory	32	
	counselling	30	
s. 264.1	Uttering Threats	4	
	conspiracy	3	
	attempt	3	
	accessory	3	
	counselling	3	
s. 268	Aggravated Assault	4	
	conspiracy	4	
	attempt	4	
	accessory	4	
	counselling	4	
s. 269	Unlawfully causing Bodily Harm	1	
	conspiracy	1	
	attempt	1	
	accessory	1	
	counselling	1	
s.271	Sexual Assault	2	
	conspiracy		
	attempt	2	
	accessory	1	
	counselling		

Section	Offence	Authorizations (s.185)	Warrants (s.487.01(4))
s. 334	<b>Theft</b>	<b>13</b>	
	conspiracy	11	
	attempt	11	
	accessory	11	
	counselling	7	
s. 344	<b>Robbery</b>	<b>8</b>	
	conspiracy	7	
	attempt	8	
	accessory	4	
	counselling	5	
s. 346	<b>Extortion</b>	<b>5</b>	
	conspiracy	4	
	attempt	5	
	accessory	3	
	counselling	3	
s. 348	<b>Break &amp; Enter</b>	<b>11</b>	
	conspiracy	9	
	attempt	10	
	accessory	10	
	counselling	7	
s. 354	<b>Possession of Property Obtained by Crime</b>	<b>26</b>	
	conspiracy	24	
	attempt	20	
	accessory	18	
	counselling	14	
s. 367	<b>Forgery</b>	<b>3</b>	
	conspiracy	3	
	attempt	3	
	accessory	2	
	counselling	2	

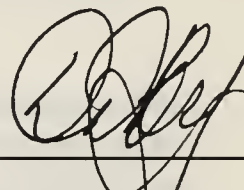
Section	Offence	Authorizations (s.185)	Warrants (s.487.01(4))
s. 368	Uttering Forged Document	2	
	conspiracy	3	
	attempt	1	
	accessory	1	
	counselling	1	
s. 380	Fraud	3	
	conspiracy	3	
	attempt	2	
	accessory	2	
	counselling	2	
s.433	Arson	3	
	conspiracy	3	
	attempt	3	
	accessory	3	
	counselling	3	
s. 449	Make Counterfeit Money	1	1
	conspiracy	1	1
	attempt		
	accessory		
	counselling		
s. 450	Possession of Counterfeit Money	1	1
	conspiracy	1	1
	attempt		
	accessory		
	counselling		
s. 452	Utter Counterfeit Money	2	1
	conspiracy	3	1
	attempt	1	
	accessory	1	
	counselling	1	



Section	Offence	Authorizations (s.185)	Warrants (s.487.01(4))
s. 462.31	Laundering Proceeds of Crime	3	1
	conspiracy	3	
	attempt	2	
	accessory	2	
	counselling	2	
s.195(2)(j)	A description of all classes of places specified in the Authorization/Warrant and the number of Authorizations/Warrants in which each such class of place was specified:		
		Authorizations	Warrants
	Residences:	269	2
	Hotel rooms:	7	
	Commercial Establishments	73	1
	Vehicles	93	
	Correctional Institutions	21	
	Other	27	
s.195(2)(k)	A general description of the methods of interception involved in each interception under an Authorization/Warrant:		
		Authorizations	Warrants
	Room probes:	51	
	Telephone interceptors:	241	
	Bodypacks:	17	
	Other :	15	
	Video		1
		Authorizations	Warrants
s.195(2)(l)	The number of persons arrested whose identity became known to a peace officer as a result of an interception under an Authorization/Warrant:		
		80	5

	Authorizations	Warrants
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s.195(2)(m)	The number of criminal proceedings commenced at the instance of the Attorney General of Ontario in which private communications obtained by interception under an Authorization/Warrant were adduced in evidence:	171	1
	The number of such proceedings that resulted in a conviction:	110	
s.195(2)(n)	The number of criminal investigations in which information obtained as a result of the interception of a private communication under an Authorization/Warrant was used although the private communication was not adduced in evidence in criminal proceedings commenced by the Attorney General of Ontario as a result of the investigations:	192	
s.195(3)(a)	The number of prosecutions commenced against officers or servants of Her Majesty in right of Canada or members of the Canadian Forces for offences under section 184 or 193:	0	

  
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Larry Taman, Deputy Attorney General of Ontario





